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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MELVIN J. KELLY,)
9 Plaintiff,) CASE NO. C16-522 RSM
10 v.) ORDER DENYING MOTION TO
11) APPOINT COUNSEL
12 WASHINGTON STATE DEPARTMENT)
13 OF TRANSPORTATION, *et al.*,)
14 Defendants.)

15 This matter comes before the Court on Plaintiff's Motion to Appoint Counsel. Dkt. #12.
16 Plaintiff asks the Court to appoint counsel in this employment-related case on the basis that he
17 has contacted more than 20 attorneys and they have declined to take his case. *Id.* Plaintiff has
18 been granted leave to proceed *in forma pauperis* in this matter. Dkt. #2. The Complaint was
19 filed on April 12, 2016, Defendants have been served and have appeared, and trial is currently
20 scheduled for December 3, 2018. Dkt. #11.

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22 In civil cases, the appointment of counsel to a *pro se* litigant "is a privilege and not a
23 right." *United States ex. Rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965) (citation
24 omitted). "Appointment of counsel should be allowed only in exceptional cases." *Id.* (citing
25 *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963)). A court must consider together "both the
26 likelihood of success on the merits and the ability of the petitioner to articulate his claims *pro se*
27 in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952, 954
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1 (9th Cir. 1983). Even where the claim is not frivolous, counsel is often unwarranted where the
2 litigant's chances of success are extremely slim. *See Mars v. Hanberry*, 752 F.2d 254, 256 (6th
3 Cir. 1985).

4 At this early stage of the litigation, the Court cannot find that Plaintiff is entitled to
5 appointment of counsel. It does not yet appear that any exceptional circumstances exist, and
6 there is no record before the Court that would allow the Court to examine whether Plaintiff's
7 claims appear to have merit. In addition, Title VII does not provide an automatic right to counsel
8 for employment discrimination claims. *See* 42 U.S.C. § 2000e-5(f)(1).

9 Accordingly, the Court hereby finds and ORDERS that Plaintiff's Motion to Appoint
10 Counsel (Dkt. #12) is DENIED without prejudice. This Order does not preclude Plaintiff from
11 re-filing this Motion once a factual record pertaining to his claims has been more fully developed.
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14 DATED this 2nd day of February, 2018.

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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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